

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.04.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.K.KRISHNAN

H.C.P. Nos.1167 and 1168 of 2004

Abu Hanifa ... Petitioner in HCP.1167/04.

Jaleela Beevi ... Petitioner in HCP.1168/04.

vs.

1. The Secretary to Government
of Tamil Nadu,
Public (SC) Department,
Secretariat, Chennai 600 009.

2.The Secretary to Government
of India,
Ministry of Finance,
Department of Revenue
(COFEPOSA Unit)
Central Economic
Intelligence Bureau,
Janpath Bhavan, "B" Wing,
6th Floor, Janpath,
New Delhi 110 001.

3. The Superintendent,
Central Prison,
Chennai-600 003.

... Respondents in both HCPs.

Petitions filed under Article 226 of the Constitution of India for the issuance of writ of habeas corpus to call for the records of the first respondent relating to the detention orders passed under Section 3(1) (i) of the COFEPOSA Act, 1974 (Central Act 52 of 1974) by the State Government

of Tamil Nadu in G.O.No.SR.1/997-5/2004, Public (SC) Department, dated 20.8.2004 (HCP No.1167/04); and G.O.No.SR.1/996-4/2004 Public (SC) Department dated 23.8.2004 (HCP 1168/04) and quash the same and direct the respondents to produce the bodies of detenus Hyder Ali S/o. Abu Hanifa (HCP 1167/04) and Ahmed Basheer S/o.Mohammed Yusuf (HCP 1168/04), now detained in the Central Prison, Chennai under the provisions of the COFEPOSA Act, before this Honourable Court and set them at liberty forthwith.

For Petitioners : Mr.Abdul Nazeer
in both

For R-1 & R-3 : Mr.A.Kandasamy
in both Additional Public Prosecutor.

For R-2 : Mrs.Vanathi Srinivasan,
in both Addl. Central Govt. Standing Counsel

Common Order

(Order of the Court was made by P.SATHASIVAM, J.)

Questioning the detention order dated 20.8.2004, passed by the first respondent under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), one Abu Hanifa, father of the detenu by name Hyder Ali, initially filed HCP No.1167 of 2004. During the pendency of the above proceedings, the petitioner died and the wife of the detenu, by filing appropriate petition, is now pursuing this Habeas Corpus Petition.

One Jaleela Beevi, wife of the detenu by name Ahamed Basheer, has challenged the detention order dated 23.8.2004, detaining her husband Ahamed Basheer under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), by filing HCP No.1168 of 2004.

2. Since identical contentions have been raised in both the H.C.Ps. (except one additional contention in HCP.1168 of 2004), questioning the detention orders referred above, both the petitions are being disposed of by the following common order.

3. Heard learned counsel for petitioners, learned Additional Public Prosecutor for R-1 and R-3 and learned Additional Central Government Standing Counsel for R-2.

4. After taking us through the grounds of detention and all other connected materials in both the cases, learned counsel for the petitioners

has raised the following contentions:-

(i) Inasmuch as the mahazar witnesses, namely, M.P.Seshagiri Rao and G.Marimuthu, are one and the same in both the seizures and even according to the Officers concerned, it had taken place at 00.30 Hours on 15.08.2004, it would be highly impossible for them to be witnesses for both the alleged incidents. This material aspect has not been considered by the Detaining Authority.

(ii) Statement of co-detenu was not furnished even though the same was heavily relied on by the Detaining Authority.

(iii) Bail Petition dated 18.8.2004 was not placed before the Detaining Authority while passing the orders of detention. Further, though the same was placed before the Advisory Board, copy of the same was not supplied to the detenus which prejudiced both the detenus in making effective representation.

(iv) Though the Detaining Authority has relied on the documents like Boarding Pass and relevant pages from the Passport, Tamil translated copy of the same was not supplied in spite of the request made by the detenus as they are conversant only with Tamil language.

(v) No clarification was sought for by the Detaining Authority from the Sponsoring Authority relating to certain aspects and a number of documents, relied on by the Detaining Authority, were not supplied to the detenus.

(vi) In addition to the above points, in HCP No.1168 of 2004, it is stated that the Detaining Authority has relied on extraneous materials (one Kabir's statement). Non-furnishing of copy of the same to the detenu vitiates the order of detention.

5. Now, we shall consider the points referred above in seriatim.

6. Coming to the argument relating to "impossibility principle", it is brought to our notice that seizure was effected in respect of both the detenus, viz., Hyder Ali and Ahamed Basheer, at the same time and place, in such circumstances, according to the learned counsel for the petitioners, the mahazar witnesses, viz., M.P.Seshagiri Rao and G.Marimuthu, would not have witnessed both the seizures at the same time. In this regard, it is relevant to refer that even a perusal of the seizure mahazar in respect of detenu Hyder Ali and the other detenu Ahamed Basheer makes it clear that though the seizure was commenced at 00.30 Hours onwards on 15.8.2004, the proceedings in the case of Hyder Ali came to an end at 02.00 Hours on 15.8.2004. According to the Department, the mahazar was drawn on the spot by using the computer available in the AIU room. Coming to the proceedings relating to Ahamed Basheer, though it is stated that the seizure was commenced at the same time, viz., 00.30 Hours on 15.8.2004, the said proceedings make it clear that the same came to an end

at 03.30 Hours on 15.8.2004. Here again, the mahazar was drawn on the spot by using the computer available in the AIU room. One thing is clear that though the proceedings in both the cases started at the same time, viz., 00.30 Hours on 15.8.2004, it is seen that in the first case, it ended at 02.00 Hours and in the second case at 03.30 Hours. It is not in dispute that only the persons, who are available at the time of seizure/examination, are to be the attesting witnesses. It is highlighted before us that since these two persons, viz., M.P.Seshagiri Rao and G.Marimuthu, alone were within the area where the search and seizure had taken place, there cannot be any doubt about their presence. It cannot be claimed that it was very difficult for them to note and attest the mahazars. As rightly pointed out, the proceedings relating to the first detenu came to an end at 02.00 Hours and in the second case, the same came to an end an hour and thirty minutes later, i.e., 03.30 Hours on 15.8.2004. In such circumstances, we are satisfied that the principle of "impossibility" cannot be applied here and there is no flaw or error in preparation of the mahazar in both the cases as claimed by the learned counsel for the petitioners. Accordingly, we reject the said contention.

7. Coming to the claim that the statement of co-detenu was not furnished, no doubt, a specific claim in that regard has been made in paragraph Nos.19 and 20 of the affidavits filed in support of both the Petitions. This claim has been met by the respondents in paragraph No.15 of the counter affidavit filed in HCP No.1167 of 2004 to the effect that only on subjective satisfaction, the Detaining Authority has passed the detention order and that all the materials relied on by them were furnished to the detenu. The statement made in paragraph No.15 of the counter affidavit is relevant, which reads as under:-

" It was this detenu who spoke about Thiru Ahamed Basheer who also independently received similar such packet containing foreign currency for being carried to Singapore as in the case of the detenu. While so, the independent case of Thiru Ahamed Basheer cannot have any bearing on the subjective satisfaction of the detaining authority and the detenu is not prejudiced in any manner and is, in no way, handicapped from making any effective and purposeful representation and thus the detention order passed against the detenu is, in no way, vitiated. Thiru Ahamed Basheer is not a co-accused in this case and his statement was not a relied upon document to arrive at the subjective satisfaction of detaining Thiru Hyder Ali under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Therefore, furnishing of statement of Thiru Ahamed Basheer and the mahazar drawn for the seizure of foreign currencies from him does not arise."

It is clear from the above information that though some reference has been made about Ahamed Basheer and Hyder Ali vice versa, it is the specific

stand of the Department that the other detenu, viz., Ahamed Basheer, is not a co-accused in the case of Hyder Ali. Likewise, Hyder Ali is not a co-accused in the case of Ahamed Basheer. In such circumstances, as rightly stated, merely because there is some reference in the grounds of detention regarding the presence of other detenu and a statement has been obtained, it is not necessary to furnish the same to the detenu as claimed. Accordingly, we find that there is no substance in the said contention.

8. Coming to the third contention relating to non-placing of bail petition before the Detaining Authority, it has to be noted that the detention order was passed in the first case on 20.8.2004 and in the second case on 23.8.2004. Insofar as the first petition is concerned, it is projected before us that in the bail petition, the detenu has not only retracted his earlier statement but also stated several material facts and the same was not placed before the Detaining Authority. First of all, even according to the counsel for petitioners, in HCP No.1167 of 2004, the bail petition itself is dated 18.8.2004 and it is not in dispute that the detention order in that case was clamped on 20.8.2004. In the counter affidavit, in paragraph No.23, it is specifically stated that the bail petition filed by the detenu was not with the Sponsoring Authority for onward submission to the Detaining Authority at the time of passing the detention order. In such circumstances, as rightly stated, the question of considering the same and furnishing it to the detenu does not arise. With reference to the same point, yet another contention was raised that though copy of the bail application was placed before the Advisory Board, the same was not furnished to the detenu as a subsequent document. In this regard, learned Additional Public Prosecutor, by drawing our attention to the decision rendered in HCP No.808 of 2003, dated 20.11.2003, would submit that first of all, the bail petition, being document of the petitioner, there is no compulsion on the part of the Detaining Authority to furnish copy of the same, even otherwise, merely because the same was placed before the Advisory Board, it cannot be claimed that the same has to be furnished to the detenu if the same has not been relied on to arrive at the subjective satisfaction. While considering similar question, the Division Bench, in paragraph No.20, has concluded thus:-

" While advancing the said contention, it was further contended that these documents were not furnished to the detenu, but they were placed before the Advisory Board which is in violation of principles of natural justice. This contention in our considered view cannot be sustained in the light of the above referred pronouncements of the Supreme Court as admittedly what has been relied upon or materials whatever relied upon to arrive at the subjective satisfaction have already been furnished to the detenu. That apart, no prejudice has been shown or not pleaded

by the detenu anywhere. "

On going through the materials and the factual position therein and the details before us, we are in respectful agreement with the said view.

In this regard, learned Additional Public Prosecutor has also placed reliance on the decision of the Apex Court reported in AIR 1991 SC 2261 (Abdul Sathar Ibrahim Manik v. Union of India). In Paragraph No.10 of the said decision, Their Lordships of the Supreme Court have held as follows:-

" From the above discussion it emerges that even if the bail application and the order refusing bail are not placed before the detaining authority or even if placed, if the detaining authority does not refer to or rely upon or has failed to take them into consideration, that by itself does not lead to an inference that there was suppression of relevant material or in the alternative that there was non application of mind or that subjective satisfaction was impaired. When these documents are neither referred to nor relied upon, there is no need to supply the same to the detenu."

On going through the factual details therein, we are of the view that the above ruling is squarely applicable to the case on hand. It is also clear that what has been relied on, while passing the order of detention, undoubtedly, has to be furnished to the detenu. As stated earlier, copy of the bail petition which was filed by the detenu himself was not available with the Sponsoring Authority for forwarding the same to the Detaining Authority before passing the order of detention. While concurring with the above said decisions, we are unable to accept the argument of the learned counsel for the petitioners.

9. Coming to the other contention regarding non-supply of translated copies of the boarding pass, Passport etc., learned counsel for the petitioners heavily relied on a Full Bench Judgment of this Court reported in 2002 (2) CTC 321 (Ansar Ali v. State of Tamil Nadu). In that decision, Their Lordships, after referring the decision of the Apex Court reported in Powanammal v. State of Tamil Nadu (1999 (1) CTC 347), have held thus:-

" The standard, printed and public documents like air-ticket, boarding card, conditions printed on the passport, conditions of VISA, etc. which are of common nature are not required to be translated and in this case particularly they are not required to be translated at all. What is required to be translated is something in the nature of an entry if the information in that entry is "relied upon" in the grounds of detention. For example, in this case it was essential to give the translation of the boarding card because the detaining authority had relied on the fact that on the basis of the

boarding card the detenu was travelling. Such translation was also rightly given, in our opinion, of the first and last pages of the passport because that showed the fact that the petitioner-detenu was the holder of an Indian-passport and it was on that basis that he got the VISA but, we completely fail to follow as to how and in what manner would the standard printed instructions or the cautions or the general conditions on the passport or the VISA card are in any manner relevant for the present purpose much less for the purpose of making an effective representation. We are aware that it is not for this Court to decide as to for what purpose the detenu requires the documents. However, Powanammal case, cited supra, once for all settles the issue that it is only the "relied upon" documents or the parts thereof which would be required to be translated and supplied to the detenu if the detenu does not know the language in which the entries in the said documents appear. We, therefore, hold that in this case the aforementioned documents and more particularly the standard printed part of the public documents cannot be said to be the "relied upon" documents and the petitioner has not been able to show or prove satisfactorily that they were the "relied upon" documents. Once they are not the "relied upon" documents and are only "referred documents" then the petitioner-detenu would have to show "prejudice". We fail to see as to what prejudice can be caused to the detenu by not providing the translations of the standard printed public documents which contents are common in those documents. In our opinion, there can be no prejudice and indeed the learned counsel was also not able to show any such prejudice on account of the failure of the detaining authority to supply the translations of the pages 49, 50, 56, 57 and 61 of the paper-book demanded by the detenu and more particularly the English portion therein."

There is no dispute with regard to the above proposition and we are bound by the same. It is also not in dispute that if the documents referred to in the grounds of detention are referred only for the completion of narration of events, the detenu cannot have any grievance for non-supply of the same. As rightly observed in the decision reported in 2005 M.L.J. (Cr1.) 183 (J.Abdul Hakeem v. State), the non-supply should have impaired the detenu's right to make an effective and purposeful representation in the matter of detention. The translated copies of the documents clearly show that the same refer to his name and address, his seat number in the Air-craft and the Country he visits etc. With reference to the same, we have already perused the grounds of detention. As rightly pointed out by the learned Additional Public Prosecutor, though reference has been made

on many occasions, it cannot be claimed that those documents were relied upon and non-supply of the translated copies in any way caused prejudice to the detenus in making effective representation. It is also useful to refer the averments made in paragraph Nos.13 and 14 of the counter affidavit filed in HCP No.1167 of 2004. It is specifically stated that the detenu is a regular foreign traveller and is well aware of the procedure thereto. Further, the documents such as air ticket, passenger list, boarding pass, passport and baggage claim tags are the ones furnished to or held by the passengers in the same standard form as the same are issued to every passenger irrespective of their educational background. Similar averments have also been made in the counter affidavit filed in support of HCP No.1168 of 2004. We are satisfied that the detenus in both these cases are not prejudiced in any manner and there is no violation of Article 22(5) of the Constitution as alleged.

10. Coming to the contention that the Detaining Authority has not sought for clarification from the Sponsoring Authority relating to certain aspects and that the documents sought for by the detenus were not supplied to them, the discussion of us in the earlier paragraphs is an answer to the said contention. In the light of the materials placed, as could be seen from the grounds of detention, we are of the view that there is nothing required to be clarified as claimed by the learned counsel for the petitioners. Likewise, regarding non-supply of the documents sought for, in the order passed pursuant to the representation of the detenus as well as in the counter affidavit filed before this Court, it is specifically stated that the required documents were furnished to the detenus in the language known to them. On perusal of the same, we are in agreement with the claim made by the respondents and we find no substance in the argument advanced by the learned counsel for the petitioners.

11. Coming to the additional point raised in HCP No.1168 of 2004, namely, that the Detaining Authority has considered extraneous material while passing the order of detention, a perusal of the grounds of detention and the materials would show that though there is a reference about one Kabir, it is seen that based on the statement of the detenu, the Officers of the Department verified with the person concerned in the Mansion where he (Kabir) used to stay and it was informed that he is not aware of the address and details of the said Kabir. Merely because there is a reference about one Kabir in the grounds of detention, it cannot be construed that this has influenced the minds of the Detaining Authority while passing the detention order. Though learned counsel for the petitioners has relied on the decision of a Division Bench of this Court reported in 1996 (1) MWN (Cr.) 197 (Elangovan v. The District Magistrate and another), on going through the factual details therein, we are of the view that the conclusion reached therein is not applicable to the case on hand. We are satisfied that there is no substance in the said contention also.

12. In the light of what is stated above, we do not find any valid ground for interference. Accordingly, both the Habeas Corpus Petitions fail and the same are dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To

1. The Secretary to Government of Tamil Nadu,
Public (SC) Department, Secretariat, Chennai 600 009.
 2. The Secretary to Government of India,
Ministry of Finance, Department of Revenue (COFEPOSA Unit)
Central Economic Intelligence Bureau, Janpath Bhavan,
"B" Wing, 6th Floor, Janpath, New Delhi 110 001.
 3. The Superintendent, Central Prison, Chennai-600 003.
 4. The Public Prosecutor, High Court, Chennai.
 5. The Sub Asst. Registrar, COFEPOSA Section, High Court, Madras.
- + 2 CCs to Mr.M.Abdul Nazar, Advocate SR NO 17106 and 17107
+ 2 CCs to M/s.Vanathi Srinivasan, Advocate SR NO 17341 & 17342

je(co)
gp/16.4.

HCP. Nos.1167 and
1168 of 2004.

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